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March 21, 2003

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
One South Station  
Boston, Massachusetts 02110

Re: NSTAR Electric Energy Efficiency/Cape Light Compact, D.T.E. 03-33

Dear Secretary Cottrell:

Commonwealth Electric Company d/b/a NSTAR Electric ("NSTAR Electric" or the "Company") hereby responds to the "Petition of Cape Light Compact Regarding Certain Disputes with Commonwealth Electric Company d/b/a NSTAR Electric Pertaining to Administration and Conduct of the Cape Light Compact's Energy Plan" (the "Petition"). In its Petition, the Cape Light Compact ("CLC") requests that the Department order the Company: (1) to provide customer telephone numbers as of December 31, 2002; (2) to execute an Energy Efficiency Operating Agreement ("Operating Agreement");<sup>1</sup> and (3) to reimburse CLC for all administrative, consultant, and legal expenses regarding the filing of its petition in this proceeding.

As detailed herein, CLC's petition should be denied for several reasons. First, the Company has indicated to CLC that it would provide customer telephone numbers as long as CLC (and other energy efficiency vendors) would agree to refrain from using the numbers for solicitation purposes (See Company Letters to CLC dated February 26, 2003 and March 3, 2003). As discussed below, the Company's position on the non-disclosure of customer telephone numbers is consistent with Department precedent that sensitive customer information does not have to be disclosed for solicitation purposes, unless the customer has affirmatively chosen to allow the release of such information.

Second, CLC asks the Department to compel NSTAR Electric to accept the draft operating agreement that CLC has submitted to the Company to replace the Transition Plan. However, NSTAR Electric has in no way indicated an unwillingness to move

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<sup>1</sup> The Company and CLC currently operate pursuant to an initial agreement (the "Transition Plan") that was designed to ensure that NSTAR Electric provided CLC with funds and customer-related data to facilitate the transfer of energy efficiency program responsibilities from NSTAR Electric to CLC. The Energy Efficiency Operating Agreement that CLC refers to would work in conjunction with CLC's 2003 Energy Efficiency Plan, which CLC has not yet filed with the Department.

forward on negotiation of the plan and it is premature for the Department to intervene on this issue, since there is no genuine dispute between the parties. Lastly, CLC's request that the Department direct the Company to reimburse CLC for its consulting, administrative and legal fees has no basis in law or fact and is inconsistent with Department precedent. See e.g., Commonwealth Electric Company, D.P.U. 90-331 (1991). The Company's position with regard to each of these issues is outlined below.

#### Confidentiality of Customer Telephone Numbers

On March 3, 2003, the Company provided CLC with a CD-ROM that contained customer data for the year ending December 31, 2002, for ComElectric customers who are located within CLC's territory. This information included a listing of customer account numbers, addresses, rate class designations, and data on energy consumption and peak demand during 2002, but did not include customer telephone numbers. The information was provided to CLC despite the fact that the Company had indicated to CLC on July 2, 2001, that it would not continue to transfer such data to CLC after December 31, 2001, except at a charge based on the Company's cost to produce the information. This notification was given to CLC because the Transition Plan contemplated that CLC would eventually compile this information on its own and that CLC would develop the capability to transfer data using the electric data exchange protocols established under the Department's framework for competitive suppliers serving customers on the NSTAR system.

Although the Company had previously indicated to CLC that the customer data would not be provided after December 31, 2001, the Company agreed in January 2002 to provide the data to CLC as a good faith effort in order to facilitate the development of the new Operating Agreement, wherein these issues could be resolved on a going forward basis. The Company did not provide CLC with customer telephone numbers as part of that initiative because it has instituted a policy that prohibits the release of customer telephone numbers to third parties, unless there is a written commitment from the third-party to refrain from using the data for solicitation purposes. With the exception of unlisted phone numbers, telephone listings can be procured from a number of resources available on the market.

From the Company's perspective, the policy prohibiting the disclosure of customer telephone numbers is applicable whether the third-party is a subordinate program vendor or a Program Administrator such as CLC. It is the Company's responsibility to protect the privacy of its customers to the extent consistent with Department precedent and practice. In the past, the Department has considered privacy issues relating to the disclosure of customer-related data and has directed the electric distribution companies to establish a comprehensive list of customer-related data for competitive suppliers in order to ensure that competitive suppliers have appropriate access to customer information. Competitive Market Initiatives, D.T.E. 01-54 (2001); D.T.E. 01-54-A (2001); D.T.E. 01-54-B (2002). This information includes names,

addresses, rate class designations, historic usage information, meter read cycles, contact persons, type of services, unique customer identifiers, zonal or nodal location designations and service delivery points, but does not include telephone numbers.

In its petition, CLC claims that because of its role as a Program Administrator of energy efficiency programs, it is entitled to receive customer telephone numbers provided by the Company to implement certain aspects of its energy efficiency programs (Petition at 9). Specifically, CLC states that its use of customer telephone numbers is limited to: (1) indexing the database of customers; (2) scheduling energy efficiency audit requests; (3) determining compliance with follow-up surveys, (4) evaluating energy efficiency services; and (5) providing information to customers concerning the Compact's energy efficiency programs (Petition at 15). NSTAR Electric is willing to provide the phone numbers for these purposes and has indicated such to CLC. However, CLC has refused to agree to refrain from using the telephone numbers for marketing or solicitation purposes (an activity that CLC did not list for the Department), which raises significant privacy issues because customers have not had the opportunity to authorize the release of their telephone numbers for solicitation purposes.

CLC contends that it offered the Company a "compromise" whereby the Company would provide CLC with customer telephone numbers and CLC would agree not to make telephone solicitations to customers with unpublished telephone numbers (Petition at 12). However, the Company has no way to identify which telephone numbers are unlisted and to implement such a system would have significant cost ramifications that extend well beyond any cost that would be incurred by CLC to purchase the published numbers from a third-party resource. In fact, this information can be easily obtained by CLC and CLC has ample program resources to cover any expenses associated with the purchase of published customer numbers. Therefore, the Department should protect the privacy of customer telephone numbers, where the disclosure of these numbers is intended to serve solicitation purposes.

#### 2003 Energy Efficiency Program Operating Agreement

In its petition, CLC provides the Department with its draft Operating Agreement and requests that the Department order NSTAR Electric to accept the terms and conditions of this agreement without further negotiation. It is well within the Company's discretion to take a period of time to review the draft agreement, to formulate a response to CLC's draft and to pursue negotiations with CLC on the terms of that agreement going forward. The new operating agreement is intended to set forth the terms and conditions relating to the transfer of data and funds between the Company and CLC in order for CLC to implement its 2003 Energy Efficiency Plan. Therefore, the issues covered by the Operating Agreement are business issues between CLC and the Company that can and should be resolved by the parties. The Company is providing CLC with energy efficiency revenues for 2003 using the identical mechanism contained in the Transition Plan and proposed by CLC in its draft Operating Agreement. Moreover, the Company

will continue to provide the customer data (without customer telephone numbers) in accordance with the timelines established in the Transition Plan and as proposed by CLC in its draft Operating Agreement until such time that the provisions of a new operating agreement take effect. NSTAR Electric fully intends to move forward with CLC in negotiating the new operating agreement. Therefore, contrary to CLC's claims, the ongoing negotiations have not in any way come to an impasse, nor has the negotiation process been an impediment to CLC's successful implementation of its energy efficiency programs. Therefore, the Department should allow the Company to continue to work with CLC to enter into a new agreement on a timeline that coincides with the Department's review of CLC's 2003 Energy Efficiency Plan.

Reimbursement of Consulting, Administrative and Legal Fees

In its petition, CLC has not identified any basis in law or fact to justify the Department awarding CLC consulting, administrative and/or legal fees. The Company is engaged in routine business transactions with CLC and CLC is incurring the referenced costs at its discretion. CLC does not dispute that the Company has remitted energy efficiency revenues to CLC in accordance with the terms of the Transition Plan or that the Company continues to honor the terms of the Transition Plan pending the completion of a new Operating Agreement. Further, CLC has failed to prove that any action taken by the Company with regard to the provision of customer-related data or the negotiation of the Operating Agreement has resulted in CLC's inability to operate its energy efficiency program. Accordingly, there is no basis in law or fact that would justify the Department ordering the Company to reimburse CLC for all administrative, consultant and legal expenses regarding the matters outlined in CLC's petition. See Commonwealth Electric Company, D.P.U. 90-331 (2001). Therefore, the Department should deny CLC's request.

Should you have any questions concerning these matters, please do not hesitate to contact me.

Sincerely,

Cheryl M. Kimball

Enclosures

cc: Kevin Penders, Hearing Officer  
Paul G. Afonso, General Counsel  
Ron LeComte, Director, Electric Power Division  
Jeffrey M. Bernstein, Esq.  
Lisa M. Carloni, Director – Energy Efficiency Services